WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935

ENROLLED

SENATE BILL No. 283

(By Mr. [Signature])

PASSED March 9, 1935

In Effect from Passage
ENROLLED

Senate Bill No. 283

(BY MR. HODGES, MR. PRESIDENT) (by request)

[Passed March 9, 1935; in effect from passage.]

AN ACT to amend section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and to amend said article thirteen by adding thereto sections two-(a) and two-(i) inclusive, relating to business, occupation and privilege taxes.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended
by section two, article thirteen, chapter thirty-three of the acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted and that said article thirteen be amended by the addition thereto of sections two-(a) to two-(i) inclusive, to read as follows:

Section 2. There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-(a) to two-(i) inclusive, of this article.

If any person liable for any tax under sections two-(a) or two-(b) shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other
17 circumstances where the relation between the buyer and seller
18 is such that the gross proceeds from the sale are not indicative
19 of the true value of the subject matter of the sale, the tax
20 commissioner shall prescribe uniform and equitable rules for
21 determining the value upon which such privilege tax shall be
22 levied, corresponding as nearly as possible to the gross proceeds
23 from the sale of similar products of like quality or character
24 where no common interest exists between the buyer and seller
25 but the circumstances and conditions are otherwise similar.
26 Gross income included in the measure of the tax under sec-
27 tions two-(a) and two-(b) of this article, except in the case
28 of production of natural gas, shall neither be added nor de-
29 ducted in computing the tax levied under the other sections of
30 this article.
31 A person exercising any privilege taxable under sections
32 two-(a) or two-(b) of this article and engaging in the business
33 of selling his natural resources or manufactured products at
34 retail in this state shall be required to make returns of the
35 gross proceeds of such retail sales and pay the tax imposed in
36 section two-(c) of this article for the privilege of engaging
37 in the business of selling such natural resources or manu-
38 factured products at retail in this state. But any person
39 exercising any privilege taxable under sections two-(a) or
40 two-(b) of this article and engaging in the business of selling
41 his natural resources or manufactured products to manufac-
42 turers, wholesalers or jobbers, and in the case of limestone,
43 sand, gravel or other mineral product, to commercial con-
44 sumers, shall not be required to pay the tax imposed in section
45 two-(e) of this article for the privilege of selling such natural
46 resource products or manufactured products at wholesale.
47 Manufacturers exercising any privilege taxable under section
48 two-(b) of this article shall not be required to pay the tax
49 imposed in section two-(e) of this article for the privilege of
50 selling their manufactured products for delivery outside of this
51 state, but the gross income derived from the sale of such manu-
52 factured products outside of this state shall be included in
53 determining the measure of the tax imposed on such manu-
54 facturer in section two-(b).
55 A person exercising privileges taxable under the other sec-
56 tions of this article, producing coal, oil, natural gas, minerals,
57 timber or other natural resource products the production of
58 which is taxable under section two-(a), and using or consuming
the same in his business, shall be deemed to be engaged in the
business of mining and producing coal, oil, natural gas, minerals,
timber or other natural resource products for sale, profit or
commercial use, and shall be required to make returns on
account of the production of the business showing the gross
proceeds or equivalent in accordance with uniform and
equitable rules for determining the value upon which such
privilege tax shall be levied, corresponding as nearly as pos-
sible to the gross proceeds from the sale of similar products of
like quality or character by other taxpayers, which rules the
tax commissioner shall prescribe.

Sec. 2-(a). Upon every person engaging or continuing within
this state in the business of producing for sale, profit, or com-
mercial use any natural resource products, the amount of such
tax to be equal to the value of the articles produced as shown
by the gross proceeds derived from the sale thereof by the
producer, except as hereinafter provided, multiplied by the
respective rates as follows: Coal, one per cent; limestone or
sandstone, quarried or mined, one and one-half per cent; oil,
three per cent; natural gas, in excess of the value of five thou-
sand dollars, six per cent; blast furnace slag, three per cent;
sand, gravel or other mineral product, not quarried or mined, three per cent; timber, one and one-half per cent; other natural resource products, two per cent. The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that delivery may be made to points outside the state.

Sec. 2-(b). Upon every person engaging or continuing within this state in the business of manufacturing, compounding, or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of the article, substance, commodities or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided, multiplied by a rate of three-tenths of one per cent. The measure of this tax is the value of the entire product manufactured, compounded, or prepared in this state for sale, profit or commercial use,
16 regardless of the place of sale or the fact that deliveries may
17 be made to points outside the state.

Sec. 2-(c). Upon every person engaging or continuing within
2 this state in the business of selling any tangible property what-
3 soever, real or personal, except sales by any person engaging
4 or continuing in the business of horticulture, agriculture or
5 grazing, or if selling stocks, bonds or other evidences of in-
6 debtedness, there is likewise hereby levied, and shall be col-
7 lected, a tax equivalent to one-half of one per cent of the gross
8 income of the business, except that in the case of a wholesaler
9 or jobber, the tax shall be equal to fifteen one-hundredths of
10 one per cent of the gross income of the business.

Sec. 2-(d). Upon any person engaging or continuing within
2 this state in any public service or utility business, except rail-
3 road, railroad car, express, pipe line, telephone and telegraph
4 companies, water carriers by steamboat or steamship and motor
5 vehicle carriers, there is likewise hereby levied and shall be
6 collected taxes on account of the business engaged in equal to
7 the gross income of the business multiplied by the respective
8 rates as follows: Street and interurban and electric railways,
9 one per cent; water companies, four per cent, except as to in-
come from municipally owned water plants; electric light and power companies, four per cent on sales and demand charges for domestic purposes and commercial lighting and three per cent on sales and demand charges for all other purposes, except as to income from municipally owned plants producing or pur-chasing electricity and distributing same; natural gas companies, three per cent on the gross income, said gross income for this purpose to be determined by deducting from gross income from all sales to consumers the amount of the tax paid by the taxpayers under section two-(a) of this article; toll bridge companies, three per cent; and upon all other public service or utility business, two per cent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries.

Sec. 2-(e). Upon every person engaging or continuing within this state in the business of contracting, the tax shall be equal to two per cent of the gross income of the business.

Sec. 2-(f). Upon every person engaging or continuing within this state in the business of banking, the tax shall be equal to five-tenths of one per cent of the gross income of the business.
Sec. 2-(g). Upon every person engaging or continuing within this state in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to one half of one per cent of the gross income of the business.

Sec. 2-(h). Upon every person engaging or continuing within this state in any service business or calling not otherwise specifically taxed under this act, there is likewise hereby levied and shall be collected a tax equal to one per cent of the gross income of any such business.

Sec. 2-(i). Upon every person engaging or continuing within this state in the business of collecting incomes from the use of real or personal property or of any interest therein, whether by lease, conveyance or otherwise, and whether the return be in the form of rentals, royalties, fees, interest or otherwise, the tax shall be one per cent of the gross income of any such activity: Provided, That any person who shall make return of and pay a personal net income tax on the incomes covered by this section two-(i) shall not be required to pay the tax herein...
10 imposed upon said incomes.

11 This act shall take effect as of January first, one thousand nine hundred thirty-five and the first tax assessed under it shall be upon the calendar year one thousand nine hundred thirty-five.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate
Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 15th day of March, 1935.

Governor

Filed in the office of the Secretary of State of West Virginia, MAR 15 1935.

Wm. S. O'Brien,
Secretary of State